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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

11 CIV 9538

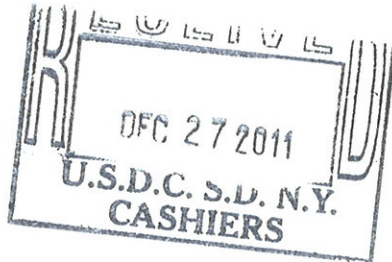
REGINALD RUCKER and his wife
DARLENE RUCKER; JAMES ROURKE, and
his wife CAROL ROURKE; MICHAEL
SANDUSKY and his wife BARBARA
SANDUSKY, and TERRANCE METCALF,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

National Football League and NFL Properties
LLC;

Defendants.



Case No. _____

**PLAINTIFFS' CLASS ACTION AND
INDIVIDUAL COMPLAINT FOR
DAMAGES, AND DEMAND FOR JURY
TRIAL**

1. Declaratory Relief (on behalf of the Class)
2. Medical Monitoring (on behalf of the Class)
3. Fraud (on behalf of the Class and the Individual Named Plaintiffs)
4. Negligence (on behalf of the Individual Named Plaintiffs)
5. Loss of Consortium (on behalf of the Individual Named Plaintiffs)
6. Negligent Misrepresentation (on behalf of the Individual Named Plaintiffs)
7. Conspiracy (on behalf of the Individual Named Plaintiffs)

Plaintiffs, on behalf of themselves and all others similarly situated, by and through their attorneys, for this Complaint against Defendants the National Football League and NFL Properties, LLC, named above hereby allege as follows:

INTRODUCTION

1. In 2002, Dr. Bennet Omalu, a forensic pathologist and neuropathologist in Pittsburgh, Pennsylvania, became the first doctor to identify a brain condition termed “Chronic Traumatic Encephalopathy” or “CTE” in a retired football player. Dr. Omalu discovered the condition, marked by dark brown protein staining on the brain, when studying the brain of Mike Webster, a National Football League Hall of Famer who died at age 50 after years of severe depression and dementia that had reduced him to homelessness.

2. By 2007, Dr. Omalu had identified CTE in the brains of four deceased former NFL players. He determined the brain damage he found in the players was the same condition found in punch-drunk boxers.

3. Also in 2007, NFL Commissioner Roger Goodell admitted that the NFL had been studying the effects of concussions on its players for “close to 14 years[.]”

4. At that time, the NFL unequivocally asserted there was “no evidence of worsening injury or chronic cumulative effects” from multiple concussions and that “many NFL players can be safely allowed to return to play” on the same day of a concussion if they were without symptoms and cleared by a (team) physician.

5. The NFL’s position was completely contrary to the over 75 years of study and knowledge within the scientific and medical community regarding the diagnosis and treatment of concussions.

6. Because the NFL's position was that football-related concussions were not serious injuries and should not prevent players from returning to play, its common policy and practice for all players, for decades, was to minimize the injury and encourage players to return to play shortly after suffering a concussion.

7. In June 2010, in the face of mounting pressure, the NFL finally acknowledged the truth. The NFL finally issued warnings to every team and player stating that concussions suffered while playing NFL football can lead to CTE and its related symptoms, including memory loss, dementia, and death.

8. Plaintiffs are retired NFL football players. Plaintiffs bring this lawsuit on behalf of themselves and all retired players similarly situated who suffered brain injuries as a result of playing professional football in the NFL.

9. Plaintiffs' head injuries, and the serious, ongoing health consequences resulting from them, were directly caused and exacerbated by the negligence, fraud, and other misconduct of the Defendants. Until very recently, Defendants have actively sought to suppress and obscure the truth about the long-term effect of concussions suffered while practicing and playing football for the NFL.

10. Defendants' efforts to obscure the truth about the cause, treatment, and consequences of football-related concussions caused players who suffered concussions to be misdiagnosed, to not receive proper treatment, and to continue practicing and playing with these severe injuries.

11. As a result of Defendants' misconduct described herein, the Plaintiff retired NFL football players and their wives have suffered substantial injury, including economic loss, and

interference with their ability to live a normal life. Defendants are liable for negligence, fraud, and loss of consortium.

12. Since Defendants engaged in this misconduct with respect to Plaintiffs in the same manner as to thousands of other players and their wives, a class action is the superior means of resolving this issue for all affected consumers.

PARTIES

13. Reginald Rucker is a resident of Warrensville Heights, Ohio. Mr. Rucker played in the NFL from 1969 to 1981 for the Dallas Cowboys, New York Giants, New England Patriots, and Cleveland Browns. Mr. Rucker suffered multiple concussions during his NFL career that were improperly diagnosed and treated. To this day, Mr. Rucker suffers from dizziness, light headedness, and depression as a result of the head injuries he suffered as an NFL player. Mr. Rucker's wife, Darlene Rucker, also brings a claim for loss of consortium.

14. James Rourke is a resident of Abington, Massachusetts. Mr. Rourke played in the NFL from 1979 to 1988 for the Oakland Raiders, Kansas City Chiefs, New Orleans Saints and Cincinnati Bengals. Mr. Rourke suffered multiple concussions during his NFL career that were improperly diagnosed and treated. To this day, Mr. Rourke suffers from dizziness, sleep loss, headaches, short term memory impairment, and memory loss as a result of the head injuries he suffered as an NFL player. Mr. Rourke's wife, Carol Rourke, also brings a claim for loss of consortium.

15. Plaintiff Michael Sandusky is a resident of Naples, Florida. Mr. Sandusky played for the San Francisco 49ers and Pittsburgh Steelers from 1957-65. Mr. Sandusky suffered multiple concussions that were improperly diagnosed and treated throughout his career as a professional football player in the NFL. To this day, Mr. Sandusky suffers from depression,

short term memory loss, anxiety, and emotional issues as a result of the head injuries he suffered as an NFL player. Mr. Sandusky's wife, Barbara Sandusky, also brings a claim for loss of consortium.

16. Plaintiff Terrance Metcalf is a resident of Seattle, Washington. Mr. Metcalf played for the St. Louis Cardinals from 1973-77 and the Washington Redskins in 1981. Mr. Metcalf suffered multiple concussions that were improperly diagnosed and treated throughout his career as a professional football player in the NFL. He retired due to an injury incurred from a blow to the head. To this day, Mr. Metcalf experiences loss of memory, headaches, ringing in the ears, and feelings of unbalance due to his head injuries.

17. Defendant National Football League ("NFL") is an unincorporated association with its headquarters and principal place of business located at 280 Park Avenue, New York, New York. The National Football League is engaged in interstate commerce in the business of, among other things, operating the sole major professional football league in the United States. The National Football League is not, and has not, been the employer of the Plaintiffs, who were employed during their respective careers in professional football by the independent clubs indicated above. The United States Supreme Court held last year in *American Needle, Inc. v. NFL*, 130 S. Ct. 2201, 2212-13 (2010) that each team that is a member of the National Football League is a legally distinct and separate entity from both other teams and the League itself:

The NFL teams do not possess either the unitary decision making quality or the single aggregation of economic power characteristic of independent action. Each of the teams is a substantial, independently owned, and independently managed business. "[T]heir general corporate actions are guided or determined" by "separate corporate consciousnesses," and "[t]heir objectives are" not "common." ... The teams compete with one another, not only on the playing field, but to attract fans, for gate receipts and for contracts with managerial and playing personnel.

Defendant NFL Properties, LLC, as the successor-in-interest to National Football League Properties Inc. (“NFL Properties”), is a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in the State of New York. NFL Properties is engaged in, among other activities, approving, licensing and promoting equipment used by all the National Football League teams. NFL Properties regularly conducts business in California.

18. Defendants National Football League and NFL Properties shall be referred to collectively herein as the “NFL Defendants” or “Defendants.”

19. The NFL caused or contributed to the injuries and increased risks alleged herein through its acts and omissions in failing to disclose the true risks of repeated traumatic brain and head impacts in NFL football, and failing to take appropriate steps to prevent and mitigate repeated traumatic brain and head impacts in the NFL and the latent neurodegenerative disorders and diseases caused by these impacts.

20. On information and belief, Defendant NFL policies and decision making relevant to the conduct alleged herein, occurred primarily at its corporate offices in New York City.

21. Third parties that conspired with the NFL in the tortious conduct alleged herein include but are not limited to the member NFL clubs; and Riddell Inc., d.b.a. Riddell Sports Group, Inc., All American Sports Corp. d.b.a. Riddell/All American, Riddell Sports Group, Inc., Easton-Bell Sports, Inc., and Easton-Bell Sports LLC, EB Sports Corp.

JURISDICTION AND VENUE

22. Jurisdiction is based on 28 USC §1332.

23. Venue in this action is proper in this Court pursuant to 28 USC §1391.

24. The amount in controversy exceeds \$75,000 for the individual claims and \$5,000,000 for the class claims.

GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS

The Concussion Risk

25. According to the Center for Disease Control and Prevention, “A concussion is a type of traumatic brain injury, or TBI, caused by a bump, blow, or jolt to the head that can change the way your brain normally works.” The CDC notes that, “Health care professionals may describe a concussion as a ‘mild’ brain injury because concussions are usually not life-threatening. Even so, their effects can be serious.”

26. The CDC advises “Athletes with a concussion should never return to sports or recreation activities the day of the injury and until a health care professional, experienced in evaluating for concussion says they are symptom-free and it’s OK to return to play.”

27. The seriousness of concussions and the risk to athletes has been well documented and published for well over seventy-five years.

28. In 1928, the first case of “Punch Drunk” syndrome in boxers was published in the *American Association Journal* by HS Martland.

29. In 1952, the *New England Journal of Medicine*, Vol. 246, discussed a 1945 three strike rule for concussions in football – if you receive three concussions playing football you should retire.

30. In 1969, a report by the Royal College of Physicians of London confirmed the danger of chronic brain damage occurring in boxers as a result of their careers.

31. In 1973, neurosurgeon R.C. Schneider first described a disabling and sometimes deadly condition involving the second impact concussion occurring before symptoms of a first concussion. This phenomenon was termed “second-impact syndrome” in 1984 by Dr. R.L. Saunders.

32. In 1980, *Clinical Neurosurgery* published an article titled “Football head and neck injuries – an update.” The article concluded:

Arbitrarily, most physicians discourage further football participation if an athlete has suffered three cerebral concussions. Strong consideration must be given, however, not only to the number and severity of the concussion, but also to any CAT scan evidence of cerebral edema, contusion, or hemorrhage. With this incredibly sensitive diagnostic tool, one concussion, which is associated with radiographic evidence of structural brain damage, may be enough to strongly discourage or forbid further football participation.

33. In 1982, *Canadian Medical Association Journal* published an article titled “Return to athletic competition following concussion.” The article concluded:

The basic recommendation is that return to training and competition should be deferred until all associated symptoms such as headaches have completely resolved. The decision to return must take into account the nature of the sport, the athlete’s level of participation and the cumulative effect of previous concussions. Some athletes will have to avoid any further participation in their sport.

34. In 1986, the *Physician and Sportsmedicine* journal published an article by Dr. Robert Cantu titled “Guidelines for return to contact sports after cerebral concussion.” Cantu established a system to grade the severity of concussions and corresponding guidelines for when players should return to play.

35. In 1991, *JAMA* published an article titled “Concussion in sports. Guidelines for the prevention of catastrophic outcome.” The article described “a high school football player who died of diffuse brain swelling after repeated concussions without loss of consciousness” and guidelines “to reduce the risk of such serious catastrophic outcomes after concussion in sports.”

36. The foregoing references are by no means exhaustive. Physicians and academics have exhaustively studied and reported the danger of concussions suffered both inside and outside of sports over the past eight decades.

37. NFL football is among the most dangerous sports in terms of the risk of concussion. A study presented at the American Academy of Neurology's 52nd Annual Meeting in 2000 and authored principally by Dr. Barry Jordan, Director of the Brain Injury Program at Burke Rehabilitation Hospital in White Plains, New York, surveyed 1,094 former NFL players between the ages of 27 and 86 and found that: (a) more than 61% had suffered at least one concussion in their careers with 30% of the players having three or more and 15% having five or more; (b) 51% had been knocked unconscious more than once; (c) 73% of those injured said they were not required to sit on the sidelines after their head trauma; (d) 49% of the former players had numbness or tingling; 28% had neck or cervical spine arthritis; 31% had difficulty with memory; 16% were unable to dress themselves; and 11% were unable to feed themselves; and (e) eight suffered from Alzheimer's disease.

38. In recent years, serious, long-term effect of concussions in retired players has jumped to the fore amid reports of a steady stream of high-profile, premature deaths involving retired NFL players, many under tragic circumstances. Examples include Mike Webster (heart attack), Andre Waters (suicide); Terry Long (antifreeze poisoning); Justin Strzelczyk (car accident following hallucinations); John Grimsley (gunshot); Tom McHale (drug overdose); Shane Dronett (suicide); Dave Duerson (suicide); and John Mackey (dementia). Autopsies found CTE in every single one of these players. These tragic deaths and the presence of CTE have cast doubt on the cause of other retired player deaths and incidents of volatile behavior among retired NFL players

The NFL Whitewashes the Concussion Threat Facing Its Current and Former Players

39. In 1994, the NFL decided to take formal action to evade the concussion issues facing its current and former players. That year, the NFL created the "Mild Traumatic Brain

Injury Committee” (“MTBIC”), chaired by Dr. Elliott Pellman, a rheumatologist who reportedly attended medical school in Guadalajara, Mexico. Pellman was joined on the MTBIC by Dr. Ira Casson, a neurologist, and Dr. David Viano, a biomechanical engineer. Casson and Viano later replaced Pellman as co-chairs of the MTBIC in 2007.

40. The MTBIC’s purpose was to minimize the seriousness of concussions to combat the notion that football is a perilous game. Thus, the MTBIC specifically sought to discredit longstanding medical and scientific understandings regarding the severe concussion risks inherent in the game of football. With the MTBIC, the NFL set to affirmatively distorting, skewing, and minimizing longstanding scientific and public perceptions regarding the danger of concussion.

41. One of the ways the MTBIC sought to hide the risk of concussions was by publishing biased research derived from its ongoing survey of retired NFL players. ESPN the Magazine described the MTBIC’s efforts:

In October 2003, Pellman and members of his committee published the first of a long-running series on concussions in *Neurosurgery*, a scholarly journal edited by Mike Apuzzo, the New York Giants neurosurgical consultant. The committee’s earliest studies used crash test dummies to reenact helmet blows. Later, the group decided to explore the ill effects of multiple concussions, and Pellman charged one of its members, Mark Lovell, head of the University of Pittsburgh Medical Center’s Sports Medicine Concussion Program to oversee the collection and analysis of leaguewide data. Pellman chose Lovell because he had conducted neuropsychological tests for the Steelers as early as 1993. And in 1995, Lovell began to run the NFL’s neuropsychology program, which encouraged teams to gather data to help decide when to return players to games.

Using the information they would obtain, Pellman, Lovell and the committee planned to look at baseline results and identify a normal range of scores for uninjured NFL players. Then, comparing postinjury scores to baseline data would show the effects of concussions. Comparing data from players with multiple concussions to that of all injured players would show whether concussive effects changed as injuries accumulated.

A lot was riding on the analysis. The committee had never imposed recommendations on team medical staffs. But this was the first study ever to analyze the brain function of NFL athletes. If it showed that concussions were significantly impairing players, the league might be forced to institute new rules for evaluating and treating head injuries. Pellman and Lovell both say they invited all teams to participate in the research (Lovell says 11 teams elected to join the study) and tried to collect as many results as they could. As Lovell puts it, "More data is always better." Several of the doctors involved, however, tell a different story. [William] Barr [a neuropsychologist at Long Island Jewish Hospital], for example, conducted 217 baseline tests from 1996 to 2001. Periodically, he forwarded results to the league, but at the time Barr learned the committee was planning to publish its results, he had sent only 149. Barr remembers finding Pellman in the Jets' training room in 2003 and saying, "Elliot, I haven't sent data for a year." According to Barr, Pellman didn't want the additional tests. "I don't want the data to be biased because I'm with the Jets," Barr recalls him saying, suggesting that additional results would skew the data because the Jets would be overrepresented in the sample. That made no sense to Barr. A scientific study should include, or at least address, all available data.

Pellman denies this conversation ever took place. "Bill Barr was a consultant for the Jets who tested individual players to help us make decisions," he says. "I did not discuss the committee's research with him." Whoever is right, the fact is the group didn't have all of Barr's data for its paper.

Barr's wasn't the only research that didn't make the cut. Over the period covered by the committee's research, Christopher Randolph, a Chicago neuropsychologist, collected baselines for 287 Bears players. He says Lovell never asked for his data, either.

Nor did the committee seek complete data from John Woodard, neuropsychologist for the [Atlanta] Falcons and associate psychology professor at the Rosalind Franklin University of Medicine and Science in North Chicago. According to Woodard, in December 2003, Lovell said the league was pressuring him to compile team results. "I was asked to provide data on only concussed players," Woodard says. "I had data for slightly more than 200 baseline evaluations. I don't know why I was not asked for them."

In 2004, Lovell also asked Richard Naugle, consultant to the Browns and head neuropsychologist at the Cleveland Clinic, for data on just the players who had already suffered concussions, according to an e-mail Naugle wrote to a colleague in March 2005. Naugle declined to comment for this story, citing a confidentiality deal between his medical group and the NFL, but The Magazine has obtained a copy of that message. "I don't have that sorted out from the results of other testing," Naugle wrote of the request. "I explained that and added that if he could name players, I could send data on those individuals. I recall sending him data on two or three players ... I have a few hundred baselines."

This means Pellman, Lovell and their colleagues didn't include at least 850 baseline test results in their research—more than the 655 that ultimately made it into their 2004 Neurosurgery paper. At best, their numbers were incomplete. At worst, they were biased.

Pellman, Lovell and their colleagues published their sixth paper in *Neurosurgery* in December 2004. It examined baseline data on 655 players and results for 95 players who had undergone both baseline testing and postconcussion testing. It concluded that NFL players did not show a decline in brain function after suffering concussions. Further analysis found no ill effects among those who had three or more concussions or who took hits to the head that kept them out for a week or more. The paper didn't explain where the players in the groups came from specifically or why certain players were included and hundreds of others were not. Neither Pellman nor Lovell has provided those details since.

42. Scientists concurred with the assessment that the MTBIC's research was biased and unreliable. As the ESPN The Magazine article reported:

The decision to publish the paper was controversial. "I highly doubt this study would have seen the light of day at this journal were it not for the subject matter of NFL players," says Robert Cantu, chief of neurosurgery and director of sports medicine at Emerson Hospital in Concord, Mass., and a senior editor at Neurosurgery. "The extremely small sample size and voluntary participation suggest there was bias in choosing the sample. The findings are extremely preliminary at best, and no conclusions should be drawn from them at this time."

One of the scientists who reviewed the committee's work is equally blunt. "They're basically trying to prepare a defense for when one of these players sues," he says. "They are trying to say that what's done in the NFL is okay because in their studies, it doesn't look like bad things are happening from concussions. But the studies are flawed beyond belief."

43. The University of North Carolina's Dr. Kevin M. Guskiewicz was also quoted as saying, "[t]he data that hasn't shown up makes their work questionable industry-funded research."

44. In October of 2006, Drs. Pellman and Viano published in *Neurological Focus* an interim report on the MTBIC's efforts that surveyed 12 years of data collection. The authors analyzed collected "data on mild TBIs sustained between 1996 and 2001" and concluded:

Because a significant percentage of players returned to play in the same game [as they suffered a mild traumatic brain injury] and the overwhelming majority of players with concussions were kept out of football-related activities for less than 1 week, it can be concluded that mild TBIs in professional football are not serious injuries.

45. Thus, according to the NFL's MTBIC, the physical ability of players to quickly return to play following a concussion indicated that concussions were "not serious injuries" and that they posed no ongoing threat to the health of the players.

46. The NFL's conclusions that concussions were not serious injuries and that players could immediately return to play stood in sharp contrast to the beliefs of other bodies governing contact sports.

47. For example, Rule 4.2.14 of the World Boxing Council's Rules and Regulations states: "[b]oxers that suffered concussion by KO, should not participate in sparring sessions for 45 days and no less than 30 days after concussive trauma, including but not limited to KO's, and should not compete in a boxing match in less than 75 days."

48. The Second International Conference on Concussion in Sport met in Prague in 2004 and released the following statement: "[w]hen a player shows ANY symptoms or signs of a concussion ... the player should not be allowed to return to play in the current game or practice ... When in doubt, sit them out!" This was the same position taken by the First International Conference on Concussion in Sport held in Vienna in 2001.

49. ESPN has further reported that, “[a]ll standard U.S. guidelines, such as those first set by the American Academy of Neurology and the Colorado Medical Society, agree that athletes who lose consciousness should never return to play in the same game.”

50. The MTBIC’s conclusions not only flew in the face of 75 years of accepted scientific literature, they were also based on biased data collection techniques. As ESPN reported in February of 2007:

Last fall, ESPN The Magazine reported that Pellman was selective in his use of injury reports in reaching his conclusions and omitted large numbers of players from the league’s concussion study. His findings also contradicted other scientific studies into the effects of concussions:

- In January 2005, Pellman and his colleagues wrote that returning to play after a concussion “does not involve significant risk of a second injury either in the same game or during the season.” But a 2003 NCAA study of 2,905 college football players found just the opposite: Those who have suffered concussions are more susceptible to further head trauma for seven to 10 days after the injury.
- Pellman, a rheumatologist, and his group have also stated repeatedly that their work shows “no evidence of worsening injury or chronic cumulative effects of multiple [mild traumatic brain injury] in NFL players.” But a 2003 report by the Center for the Study of Retired Athletes at the University of North Carolina found a link between multiple concussions and depression among former pro players with histories of concussions. And a 2005 follow-up study at the Center showed a connection between concussions and both brain impairment and Alzheimer’s disease among retired NFL players.

51. In addition to putting out its own bogus science and misinformation, the NFL’s MTBIC also actively worked to undermine legitimate findings regarding the serious concussion risks facing current and former players.

52. For instance, the University of North Carolina (“UNC”) performed a series of important studies on football-related injuries, which were then attacked by members of the NFL’s MTBIC.

53. A 2000 UNC study found that in the period between 1977 and 1998, an annual average of 13 athletes had suffered catastrophic injuries (primarily permanent paralysis) as the direct result of participation in football. The study also found that between 1977 and 1998, 200 football players received a permanent cervical cord injury, and 66 sustained a permanent cerebral injury.” As reported in Science Daily:

The study, published in the September-October issue of the American Journal of Sports Medicine, suggests that the brain is more susceptible to injury when it has not had enough time to recover from a first injury. Researchers say the finding is important because concussions can lead to permanent brain damage, vision impairment or even death if not managed properly.

“We believe recurrences are more likely because injured players are returning to practice and to games too quickly after blows to the head,” said Dr. Kevin M. Guskiewicz, assistant professor of exercise and sport science at UNC-CH and study leader. “Many clinicians are not following the medical guidelines that players should be symptom-free for several days before returning.”

54. A 2003 study partially authored by UNC’s Dr. Kevin Guskiewicz analyzed data from almost 2,500 retired NFL players and found that 263 of the retired players suffered from depression. The study found that having three or four concussions meant twice the risk of depression compared to never-concussed players and five or more concussions meant a nearly threefold risk.

55. In November of 2003, Guskiewicz was scheduled to appear on HBO’s “Inside the NFL” to discuss his research. Pellman, who was also going to be on the show, called Guskiewicz. “I had never spoken with him before, and he attacked me from the get-go,” Guskiewicz said. “He questioned whether it was in my best interest to do the show. He was a bull in a china shop.” On the program, Pellman said unequivocally, “[w]hen I look at that study, I don’t believe it.”

56. In 2005, Guskiewicz did a follow-up to his 2003 study and found that retired NFL players who sustained three or more concussions had a fivefold greater likelihood of suffering Mild Cognitive Impairment (“MCI”) than retired NFL players who had no history of concussions. Guskiewicz based his conclusions on a survey of over 2,550 former NFL players. Dr. Mark Lovell of the NFL’s MTBIC asserted that Guskiewicz’s study lacked “scientific rigor” and that one could not derive anything from a survey.

57. Dr. Julian Bailes, Chairman of Neurosurgery at West Virginia University and co-founder of the Brain Injury Research Institute with Dr. Bennet Omalu, has stated, “Pellman’s committee has repeatedly questioned and disagreed with the findings of researchers who didn’t come from their own injury group.”

58. Dr. Omalu, who created substantial negative publicity for the NFL by originally discovering and diagnosing CTE in Mike Webster, also found himself in the MTBIC’s crosshairs. After *Neurosurgery* published in 2005 Dr. Omalu’s CTE findings concerning Webster, the MTBIC’s Dr. Casson wrote a letter to the editor asking that Dr. Omalu’s article be retracted.

59. After Dr. Ann McKee of Boston University published conclusions that former players John Grimsley and Tom McHale died of CTE related to concussions suffered in the NFL, the MTBIC went after her.

60. The MTBIC’s Dr. Casson characterized Dr. McKee’s findings regarding Jason Grimsley and Tom McHale as isolated incidents from which no conclusion could be drawn and said he would wait to comment further until McKee’s research was published in a peer-reviewed journal. When it was published in 2009, Casson repeated the NFL’s party line that “there is not

enough valid, reliable or objective scientific evidence at present to determine whether . . . repeat head impacts in professional football result in long[-]term brain damage.”

61. When the United States Congress began inquiring into the issue of concussions in the NFL, the NFL promptly dispatched its MTBIC to whitewash the issue.

62. In June 2007, in the face of mounting Congressional and media scrutiny, the NFL held a “Concussion Summit.” Independent scientists, including Drs. Omalu, Cantu and Guskiewicz presented their research to the NFL and the National Football League Players Association (“NFLPA”). Shortly after formally receiving this adverse data showing the substantial risk of repeated concussions, the NFL issued a press release and pamphlet to its players on August 14, 2007 to neutralize it. The NFL, incredibly, maintained its position of denial and evasion, stating:

Current research with professional athletes has not shown that having more than one or two concussions leads to permanent problems... it is important to understand that there is no magic number for how many concussions is too many.

63. In November 2008, the NFL’s chief spokesman, Greg Aiello, reiterated the league’s position to the press, stating, “[h]undreds of thousands of people have played football and other sports without experiencing any problem of this type and there continues to be considerable debate within the medical community on the precise long-term effects of concussions and how they relate to other risk factors.” Mr. Aiello neglected to mention that the debate he was referencing was principally between the NFL-paid scientists and scientists operating independently of the League.

The NFL's Deceit is Exposed

64. In September 2009, the NFL faced the biggest threat yet to its ongoing deception: its own sponsored research supported a connection between repeated concussions suffered on the field and permanent, serious cognitive impairment.

65. On September 10, 2009 the University of Michigan's Institute for Social Research published a study of retired NFL players commissioned by the NFL Player Care Foundation. The study found that retired NFL players are diagnosed with Alzheimer's disease or similar medical conditions far more often than the national population—including a rate of 19 times the normal incidence for men aged 30 through 49.

66. In the face of its own findings, the NFL *continued* to deny the risk of concussions to its current and former players. A September 29, 2009 New York Times article reported:

An N.F.L. spokesman, Greg Aiello, said in an e-mail message that the study did not formally diagnose dementia, that it was subject to shortcomings of telephone surveys and that "there are thousands of retired players who do not have memory problems."

"Memory disorders affect many people who never played football or other sports," Mr. Aiello said. "We are trying to understand it as it relates to our retired players." As scrutiny of brain injuries in football players has escalated the past three years, with prominent professionals reporting cognitive problems and academic studies supporting a link more generally, the N.F.L. and its medical committee on concussions have steadfastly denied the existence of reliable data on the issue. The league pledged to pursue its own studies, including the one at the University of Michigan.

Dr. Ira Casson, a co-chairman of the concussions committee who has been the league's primary voice denying any evidence connecting N.F.L. football and dementia, said: "What I take from this report is there's a need for further studies to see whether or not this finding is going to pan out, if it's really there or not. I can see that the respondents believe they have been diagnosed. But the next step is to determine whether that is so."

The N.F.L. is conducting its own rigorous study of 120 retired players, with results expected within a few years. All neurological examinations are being conducted by Dr. Casson.

67. The University of Michigan study's findings caught the eye of Congress. In October 2009, the House Judiciary Committee held a hearing concerning "Legal Issues Relating to Football Head Injuries".

68. During the 2009 Congressional hearings, the Judiciary Committee played a televised interview of the NFL's Dr. Casson denying any links between NFL players' multiple head injuries and subsequent cognitive deterioration. NFL Commissioner Goodell refused to answer the Committee's questions regarding whether NFL-related concussions led to cognitive issues among retired players.

69. Representative Linda Sanchez expressed concern over the NFL's refusal to acknowledge the connection between concussions and serious health issues, and the impact the NFL was having on lower levels of football. According to Rep. Sanchez:

Many witnesses that we have had before the Committee have testified about how the NFL, like it or not, influences the lower levels of football, and the actions that they take or the actions that they choose to ignore to take have significant impact on players at levels. The NFL, quite frankly, has vast resources available to its disposal to educate coaches and players and medical personnel on the proper way to handle a concussed player, and if they have all these resources available to them and are not addressing the problem, imagine how can we expect every high school or college to be able to properly treat a concussed player if that proper action isn't being taken at the very top levels of the sport?

70. Representative Sanchez went on to compare the NFL's attempts to distort the body of scientific and medical knowledge to the tobacco industry. She harshly questioned Commissioner Goodell directly on the subject:

Now, the question that I have for you is, I am a little concerned, and I hear the concern expressed by some of the witnesses on the panel today, that the NFL sort of has this kind of blanket denial or minimizing of the fact that there may be this, you know, link. And it sort of reminds me of the tobacco companies pre-1990's when they kept saying no, there is no link between smoking and damage to your health or ill health effects. And they were forced to admit that that was incorrect through a spate of litigation in the 1990's. And my question to you is wouldn't the league be better off legally, and wouldn't high school and college football

players be better off, if instead of trying to minimize this issue, the league took the opposite perspective and said, look, even if there is a risk, however minuscule, that there may be this link, so we really need to jump on top of it and make kids and parents aware of this so that there isn't this sort of sense that the NFL is really just slow walking the issue to death by saying, well, we have been studying the issue for 15 years, we are going to maybe study it another 15 more years, when there is already non-NFL paid for research that suggests that there is this very high correlation with cognitive impairment? Don't you think the league, you know, would be better off legally, and that our youth might be a little bit better off in terms of knowledge, if you guys just embraced that there is research that suggests this and admitted to it?

71. In the face of the Congressional onslaught of the League, its MTBIC, its exclusive reliance upon NFL-paid research, and refusal to acknowledge adverse findings by independent researchers, the NFL decided to suspend the MTBIC's research.

72. In December 2009, the NFL was finally forced to stop its pattern and practice of deceit regarding the long-term effect of concussions on its players.

73. On December 2, 2009, Goodell announced an update on concussion guidelines for the League's players. The statement outlined several changes. First, players who sustained a concussion should not return to practice or game play the same day if the following signs or symptoms are present: loss of consciousness, confusion, amnesia or other memory problems, abnormal neurological exam, new and persistent headache, or any other persistent concussion signs. Second, if a player is held from a game, clearance for return to play should be determined by both the team physician and an independent neurological consultant. Return to play should not be considered until the athlete is asymptomatic, both at rest and with exertion, has a normal neurological exam, and has normal neuropsychological testing. The NFL subsequently clarified that primary sports care physicians could be treated as independent neurological consultants.

74. On December 20, 2009, the *New York Times* interviewed NFL chief spokesman Greg Aiello, who publically and for the first time admitted the connection between concussions suffered on the field and long term cognitive impairment. The *New York Times* reported:

After weeks of transforming its approach to concussions and its research into their long-term effects among players, the N.F.L. not only announced Sunday that it would support research by its most vocal critics but also conceded publicly for the first time that concussions can have lasting consequences.

“It’s quite obvious from the medical research that’s been done that concussions can lead to long-term problems,” the league spokesman Greg Aiello said in a telephone interview. He was discussing how the league could donate \$1 million or more to the Center for the Study of Traumatic Encephalopathy at Boston University, whose discoveries of brain damage commonly associated with boxers in the brains of deceased football players were regularly discredited by the N.F.L.

Told that his statement was the first time any league official had publicly acknowledged any long-term effects of concussions, and that it contradicted past statements made by the league, its doctors and literature currently given to players, Aiello said: “We all share the same interest. That’s as much as I’m going to say.”

Since an Oct. 28 hearing before the House Judiciary Committee, when the league’s approach to science was compared to that of the tobacco industry, the N.F.L. has accepted the resignations of the co-chairmen of its concussion committee and overhauled its policies toward concussion management. Players now must be cleared by brain-injury experts unaffiliated with the team, and cannot return to a game or practice in which they have shown any significant sign of concussion.

The second rule has since been recommended by an N.C.A.A. committee as standard policy for athletes in all sports, and will be considered by several state legislatures that have bills governing high school athletics before them.

The recent changes by the N.F.L. had amounted to tacit acknowledgments that it was no longer able to defend a position that conflicted with nearly all scientific understanding of head trauma.

Until recently, the league and its committee on concussions had consistently minimized evidence testifying to the risks of repeated brain trauma in N.F.L. players — from researchers like those at Boston University, to phone surveys the league itself commissioned, to demographic analysis of players known to have early-onset dementia. While discrediting such evidence, a pamphlet on

concussions currently given to players states, “Research is currently underway to determine if there are any long-term effects of concussion in N.F.L. athletes.”

That research study, conducted by the N.F.L.’s committee on concussions, was recently suspended amid strong criticism of its design and execution by outside experts, players and members of Congress.

“Mr. Aiello’s statement is long overdue — it’s a clear sign of how the culture of football has changed in recent months,” Dr. Robert Stern, a co-director of the Boston University center and its Alzheimer’s Disease Clinical and Research Program, said in a telephone interview.

“There is no doubt that repetitive blows to the head result in long-term problems in the brain, including progressive dementia. With the N.F.L. taking these recent actions, we are finally at a point to move forward in our research and ultimately solve this important problem — for professional athletes and collegiate and youth players.”

75. In response to Congressional scrutiny and every-mounting pressure, the NFL re-launched its MTBIC in March 2010 as the Head, Neck and Spine Medical Committee. The NFL appointed two new physicians to head its newly renamed concussion-study committee, neurological surgeons Dr. H Hunt Batjer of Northwestern Memorial Hospital in Chicago and Dr. Richard Ellenbogen of the University of Washington’s Harborview Medical Center in Seattle.

76. Drs. Batjer and Ellenbogen were immediately tasked with addressing the NFL’s MTBIC and its campaigns of misinformation and scientific dishonesty regarding the concussion issue. As one U.S. Representative stated to Drs. Batjer Ellenbogen at a May 10 Congressional hearing, “[y]ou have years of an infected system here, [and] your job is... to mop [it] up.”

77. On June 1, 2010, the *New York Times* reported some of the early findings of Drs. Batjer and Ellenbogen’s regarding the MTBIC. Among other things:

- * “They accused a fellow doctor of minimizing solid evidence of the dangers of football concussions,” “concurred that data collected by the NFL’s former brain-injury leadership was ‘infected’”, and “formally requested that the group’s former chairman, Dr. Elliot Pellman, not speak at a conference”;

- * They rejected the notion that the frequency of occurrence of CTE in retired players was unknown, acknowledging that “a Boston University research group ha[d] diagnosed it in all 12 former college and NFL players of various ages it had tested for the condition.”
- * They rejected that findings regarding CTE and its impact upon retired players were mere assertions or “hype”. Rather, Dr. Ellenbogen stated, “they are facts.”
- * They “said the [MTBIC’s] ongoing studies on helmets and retired players’ cognitive decline... would not be used in any way moving forward.” Dr. Batjer stated, “We all had issues with some of the methodologies described, the inherent conflicts of interest that was there in many areas, that was not acceptable by any modern standards or not acceptable to us. I wouldn’t put up with that, our universities wouldn’t put up with that, and we don’t want our professional reputations damaged by conflicts that were put upon us.”

78. On June 10, 2010, the NFL finally issued a warning poster and related pamphlet to its players regarding identifying concussions. This was the first time the NFL attempted to acknowledge the truth to its active players regarding concussions. (The League still has not informed its retired players; nor has it acknowledged CTE.) Unlike its previous messages to players, including its August 14, 2007, pamphlet, the NFL instructed players regarding reporting possible concussions, treating concussions, and the long-term risk of concussions. The NFL quoted the CDC’s conclusions that, “traumatic brain injury can cause a wide range of short – or long term changes affecting thinking, sensation, language, or emotions.” The NFL further informed players, “[t]hese changes may lead to problems with memory or communication, personality changes, as well as depression and the early onset of dementia. Concussions and conditions resulting from repeated brain injury can change your life and your family’s life forever.”

Riddell’s Involvement in the NFL’s Unlawful Conduct

79. Riddell is complicit in the NFL’s misconduct.

80. Riddell manufactures helmets for use by NFL players. Since 1989, Riddell has been the official helmet for the League and is the only helmet manufacturer allowed to display its logo on helmets used in League games. Prior to the commencement of the 2010 season, Riddell renewed its contract with the League allowing it to continue as the NFL's primary helmet provider through 2014. The NFL has estimated that 75% of the helmets used in the League are manufactured by Riddell; Riddell estimated that the figure was 77%.

81. Riddell has long been aware of medical issues concerning concussions. Yet despite being the maker of the official helmet for the NFL, it did nothing to prevent the disinformation campaign engaged in by the League that is described in the preceding paragraphs.

82. Indeed, Riddell actively abetted the work of the NFL's MTBIC. In 1997, it became part of that Committee's project of assessing concussions and health consequences to NFL players by analyzing and reconstructing head impacts.

83. In 2006, Riddell sponsored a study that appeared in *Neurosurgery* that was co-authored by Lovell and Dr. Joe Maroon of the MTBIC and Dr. Mickey Collins of the University of Pittsburgh Medical Center who works closely with various NFL member clubs that touted Riddell's "Revolution" helmet (introduced in 2002) as reducing the incidence of concussions in over 2000 high school athletes in Western Pennsylvania. Dr. Cantu publicly criticized the study as being worthless.

CLASS ALLEGATIONS

84. Plaintiffs are representatives of a Class, as defined by Fed R. Civ. P. 23(b)(2) and bring this action with respect to declaratory relief, medical monitoring, and fraud claims on behalf of themselves and a class with respect to which the NFL has acted or refused to act on grounds that apply generally to the class.

85. The Class is defined as:

All retired or former professional football players in the United States who were employed by any member club that was part of the association called the NFL but are not now salaried employees of the NFL or any member club.

86. Excluded from the class are those persons who fall within the definition of the collective bargaining unit contained in the 2006-12 CBA or its successor, executed in 2011. Plaintiffs and members of the Class are not seeking to enforce any provision of any CBA between the League and the NFLPA, are not challenging any provision of any such CBA and are not raising claims that involve interpretation of any provision of any such CBA. Indeed, no CBA existed during the period from 1987 to 1993 and while the 2011 CBA releases claims that could have been raised in the litigation leading up to its execution, Article 3, Section 3(a) thereof states that "[f]or purposes of clarity, this release does not cover any claim by any retired player."

87. The Class is so numerous and geographically so widely dispersed that joinder of all members is impracticable. There are questions of law and fact common to the class. Plaintiffs' claims are typical of the claims of the class that they represent and Plaintiffs will fairly and adequately protect the interests of the proposed class.

88. Questions of law and fact common to Class members predominate over any questions affecting only individual class members. These include the following:

- a) Whether Plaintiffs and the Class are entitled to the declaration of rights that they seek herein;
- b) Whether Plaintiffs and the Class are entitled to the injunctive medical monitoring relief that they seek herein;
- c) Whether the Defendants have any affirmative defenses that can be litigated on a classwide basis; and
- d) Whether the Defendants' tortious conduct was fraudulent and caused members of the Class to be at risks of repeated traumatic brain and head impacts and the excess risk of latent neurodegenerative disorders and

diseases, as well as the need for medical monitoring.

89. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

COUNT I

Declaratory Judgment (On Behalf of the Class and the Individual Named Plaintiffs)

90. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

91. There is a case and controversy among Plaintiffs and members of the Class on the one hand and Defendants on the other.

92. Pursuant to 28 USC §2201, Plaintiffs and members of the Class seek a declaration as to the following.

93. They seek a declaration that Defendants knew or reasonably should have known that the repeated traumatic brain and head impacts, as well as concussions, suffered by Class members while playing NFL football were likely to put them at excess risk to neurodegenerative disorders and diseases including but not limited to CTE, mild cognitive impairment (“MCI”), Alzheimer’s disease or similar cognitive-impairing conditions.

94. Plaintiffs and members of the Class seek a declaration that Defendants had a duty to advise them of these medical risks.

95. Plaintiffs and members of the Class seek a declaration that Defendants willfully and intentionally concealed from and misled Class members concerning these medical risks.

96. Plaintiffs and members of the Class seek a declaration that Defendants thereby recklessly endangered Plaintiffs and members of the Class.

COUNT II

Medical Monitoring (On Behalf of the Class and the Individual Named Plaintiffs)

97. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

98. Plaintiffs and members of the Class experienced repeated concussions during their NFL careers that increased their risk to neurodegenerative disorders and diseases including but not limited to CTE, MCI, dementia, Alzheimer's disease and similar cognitive-impairing conditions.

99. Defendants were fully aware of the danger of exposing their players to injury and further injury by allowing them to play with these injuries or to play prior to the time that such injuries could heal. Defendants failed to warn players of these medical risks, and instead attempted to conceal the harmful effects of football-related concussions from players. Furthermore, Defendants breached their duties of reasonable and ordinary care to the Plaintiffs and members of the Class by failing to protect their physical and mental health and failing to provide necessary and adequate treatment and safety information.

100. As a proximate result of Defendants' misconduct, Plaintiffs and members of the Class have experienced an increased risk of developing serious latent neurodegenerative disorders and diseases including but not limited to CTE, MCI, dementia, Alzheimer's disease or similar cognitive-impairing conditions.

101. A monitoring procedure exists that comports with contemporary scientific principles and makes early detection of cognitive impairment possible. Such monitoring includes baseline exams, diagnostic exams, and behavioral pharmaceutical interventions, which will prevent or mitigate the adverse consequences of the latent neurodegenerative disorders and diseases associated with the repeated concussions described herein. Furthermore, such monitoring is different than the normal medical treatment prescribed for adult males.

102. Plaintiffs and members of the Class seek an injunction creating a Court-supervised, NFL-funded medical monitoring regime, which will facilitate the early diagnosis and adequate treatment in the event a neurodegenerative disorder or disease is diagnosed.

103. Plaintiffs and the members of the Class have no adequate remedy at law in that monetary damages alone cannot compensate them for the risk of long-term physical and economic losses due to concussions and sub-concussive injuries. Without a Court approved medical monitoring program as described herein, the Plaintiffs and the members of the Class will continue to face an unreasonable risk of injury and disability.

104. Plaintiffs and members of the Class also seek all other available and necessary relief in connection with this claim.

COUNT III
Fraud (On Behalf of the Class and the Individual Named Plaintiffs)

105. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

106. Until June of 2010, the NFL, through its agents, including but not limited to its MTBIC, made material misrepresentations and omissions to its players, former players, Congress and the public at large concerning the link between concussions and the long-term impact of concussions, including CTE, MCI, dementia, Alzheimer's disease and similar cognitive-impairing conditions.

107. The NFL knew its statements were false when made, or that the statements omitted material information necessary to make the statements accurate.

108. The NFL made its statements and omissions with the intent to defraud Plaintiffs and members of the Class concerning the diagnosis, treatment, and long term consequences of concussion.

109. Plaintiffs and members of the Class justifiably relied on the NFL's misrepresentations to their detriment in getting care for their injuries.

110. The NFL's misrepresentations and omissions injured Plaintiffs and members of the Class.

111. As a result of the injuries and/or increased risk of injuries suffered by Plaintiffs and members of the Class, they are entitled to the medical monitoring relief, as alleged herein or allowed by law.

COUNT IV
Negligence (On Behalf of the Individual Named Plaintiffs)

112. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

113. The NFL has historically taken responsibility and assumed an independent tort duty to invoke measures to protect the health and safety of its players. By engaging in its misconduct described herein, the NFL has violated § 323 of the Restatement (Second) of Torts, and the common law.

114. Throughout the history of the NFL, the League has purported to exercise its duty to protect the health and safety of its players by implementing rules, policies and regulations in a purported attempt to best protect its players.

115. By enacting rules to protect the health and safety of its players, the NFL has repeatedly confirmed its duty to take reasonable and prudent actions to protect the health and safety of its players when known and foreseeable risks exist.

116. The NFL breached its duty to its players, including Plaintiffs and members of the Class, to use ordinary care to protect their physical and mental health. The NFL did so by implementing improper methods for diagnosing and treating concussions incurred by its players

and by willfully preventing the players from receiving proper diagnosis and treatment for concussions.

117. Throughout the many years that the NFL has repeatedly established its duty to protect the health and safety of its players when known and foreseeable risks exist, until June 2010, the NFL failed to create and implement league-wide guidelines concerning the treatment and monitoring of players who suffered a concussive brain injury during a game.

118. The NFL failed to establish any guidelines or policies to protect the mental health and safety of its players. As explained above, the guidelines that the League offered in 2007 were false and misleading and failed to apprise Class members of the risks associated with on-field concussions

119. The NFL's breaches of its assumed duties to protect its players includes, but is not limited to, the following failures:

- a) Failure to institute acclimation requirements or procedures to ensure proper acclimation of the NFL players before they participate in practices or games;
- b) Failure to regulate and monitor practices, games, rules, equipment, and medical care so as to minimize the long-term risks associated with concussions suffered by the NFL players, including Plaintiffs and members of the Class;
- c) Failure to require that an adequate concussion history be taken of NFL players;
- d) Failure to ensure accurate diagnosis and recording of concussion so the condition can be treated in an adequate and timely manner;
- e) Failure to invoke League-wide guidelines, policies, and procedures regarding the identification and treatment of concussions, and the return to play following a concussion;
- f) Failure to provide complete, current and competent information and directions to NFL athletic trainers, physicians and coaches regarding concussion and its prevention, symptoms, and treatment.

120. The NFL breached its assumed duty to protect the health and safety of its players by subjecting NFL players to an increased risk of concussion.

121. If the NFL would have taken the necessary steps to oversee and protect the NFL players, including Plaintiffs and members of the Class, by developing and implementing necessary guidelines, policies and procedures; and educating and training all persons involved with the NFL clubs in the recognition, prevention and treatment of concussive brain injuries, the NFL players, such as Plaintiffs and members of the Class, would not have suffered from the subject conditions or the effects of those conditions, would have recovered more rapidly, or would not have suffered long-term brain damage, including CTE, MCI, dementia, Alzheimer's disease or similar cognitive-impairing condition.

122. It was foreseeable that the NFL's violations of its duties would cause or substantially contribute to the need for medical monitoring and personal injuries suffered by the Plaintiffs and members of the Class.

123. The NFL committed acts of omission and commission, which collectively and severally, constituted negligence. The NFL's negligence was a proximate and producing cause of the injuries and/or increased risk of injuries suffered by Plaintiff and members of the Class.

124. As a result of the misconduct described herein, Plaintiffs and members of the Class suffered damages, including but not limited to pain and suffering, out of pocket medical expenses, lost wages, and loss of consortium.

125. As a result of the injuries and/or increased risk of injuries suffered by Plaintiffs and members of the Class, they are entitled to damages and medical monitoring relief, as alleged herein and allowed by law.

COUNT V

Loss of Consortium (On Behalf of the Individual Named Plaintiffs)

126. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

127. As a direct and proximate result of the carelessness, negligence and recklessness of all Defendants and of the aforesaid injuries to their husbands, the Plaintiff wives have been damaged as follows:

- a) They have been and will continue to be deprived of the services, society and companionship of their husbands;
- b) They have been and will continue to be required to spend money for medical care and household care for the treatment of their husbands; and
- c) They have been and will continue to be deprived of the earnings of their husbands.

128. As a result of the injuries to Plaintiffs, Plaintiff player wives are entitled to damages in an amount to be proven at trial.

COUNT VI

Negligent Misrepresentation (On Behalf of the Individual Named Plaintiffs)

129. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

130. Defendants misrepresented the dangers that NFL players faced in returning to action too quickly after sustaining a head injury. Defendants' MTBIC, through public statements which knew or should have known were misleading, published articles and issued the concussion pamphlet to its players, and downplayed and the long-term risks of concussions to NFL players.

131. Material misrepresentations were made by members of Defendants' committee on multiple occasions, including but not limited to testimony at congressional hearings and the "informational" pamphlet issued to players.

132. The misrepresentations included Defendants' remarks that Plaintiffs were not at an increased risk of head injury if they returned too soon to an NFL game or training session after suffering a head injury.

133. Defendants' material misrepresentations also included Defendants' criticism of legitimate scientific studies that illustrated the dangers and risks of head injuries.

134. Defendants made these misrepresentations and actively concealed adverse information at a time when they knew, or should have known, because of their superior position of knowledge, that Plaintiffs faced health problems if he were to return to a game too soon.

135. Defendants knew or should have known the misleading nature of these statements when they were made.

136. Defendants made misrepresentations and actively concealed information with the intention that Plaintiffs would rely on the misrepresentations or omissions in selecting their course of action.

137. As a direct and proximate result of Defendants' negligent, careless and grossly negligent conduct and omissions described herein, each of the individually named Plaintiffs has suffered serious personal injury including neurocognitive brain disease, and associated damages including mental disability, loss of income, pain and suffering, and emotional distress.

COUNT VII
Conspiracy (On Behalf of Individual Named Plaintiffs)

138. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

139. Defendants actively and deliberately conspired with its team members and/or independent contractors, who were directed to continuously discount and reject the casual

connection between multiple concussions suffered while playing in the NFL and neurodegenerative disease.

140. This conduct between the Defendants and others was a proximate cause of the chronic injuries and damages suffered by the individual named Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and members of the Class pray for judgment with respect to their Complaint as follows:

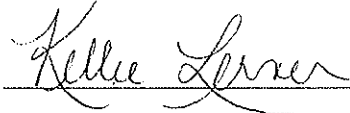
1. With respect to Counts I-III, certifying the Class proposed in this Complaint pursuant to Fed. R. Civ. P. 23(b)(2), appointing the named Plaintiffs as Class representatives and their counsel as Class counsel;
2. With respect to Count I, granting the declaratory relief requested pursuant to 28 USC §2201;
3. With respect to Count II, granting an injunction for the requested medical monitoring relief;
4. With respect to all counts, awarding Plaintiffs and Class members their costs and disbursements in this action, including reasonable attorneys' fees, to the extent permitted by law;
5. With respect to all counts, granting Plaintiffs and Class members such other and further relief as may be appropriate.
6. With respect to the individual personal injury claims plead in Counts III, IV, V, VI, and VII, an award of compensatory and punitive damages.
7. With respect to all counts, all other remedies allowed by law or equity.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all matters so triable.

Dated: December 27, 2011

Respectfully Submitted:

A handwritten signature in cursive script, reading "Kellie Lerner", written over a horizontal line.

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